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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,536	03/23/2004	Olivier Courtin	1056-04	2502
35811 7590 09/21/2007 IP GROUP OF DLA PIPER US LLP ONE LIBERTY PLACE 1650 MARKET ST, SUITE 4900 PHILADELPHIA, PA 19103			EXAMINER YU, GINA C	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 09/21/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/806,536	<b>Applicant(s)</b> COURTIN, OLIVIER	
	<b>Examiner</b> Gina C. Yu	<b>Art Unit</b> 1617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 11, 2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 2, 5, 6, 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2000-154113 ('113) and JP2000-053557 ('557), in view of English abstracts and machine translation of these patents and Dimentii et al. (Derwent Acc. No. 1993- 187369).**

Fully translated documents will be available in due time.

'113 teaches cosmetic compositions containing at least one plant extract selected from *Alpinia officinarum* Hance among others. The reference teaches that the composition is in the form of lotion, cream, oil, shaving agent, hair tonic, etc, and has high moisture-retaining effects, prevents and remedies dry, chapped, itchy and inflamed skin. See English abstract. The reference also teaches formulating a bath composition comprising detergent or perfume. See Independent Claims and Use; instant claims 8

and 9. The '113 reference teaches that about 0.001-5 % of a solid extract by weight of a cosmetic composition. See machine translation, [0072]; instant claims 5-6. The Working Examples also indicate that the plant extract is water-soluble. See machine translation, [0075-0077].

In claims 10-14, the terms "men's skin care", "shaving", "sunless tanning", "men's hair care" and "men's after shave" denote the intended future use of the composition and do not further define the structural limitation of the claims. Thus no patentable weights are given.

'133 does not teach adding purslane or buffalo grass extracts.

'557 teaches that purslane extract (*Portulaca oleracea*) has been known as a moisture-retentive plant extract, used in cosmetic compositions for "prevention, reduction and improvement of dryness, roughened skin, cracks, chaps, dandruff, itching and inflammatory diseases on the skin and of improvement of dryness, looseness, split hairs". See abstract. The '113 reference teaches that about 0.001-5 % of a solid extract by weight of a cosmetic composition. See machine translation, [0072]; instant claims 5-6. The Working Examples also indicate that the plant extract is water-soluble. See machine translation, [0075-0077].

The '133 patent and '557 patent do not teach adding buffalo grass extract.

Dimentii et al. teach that *Hierochloe* grass (buffalo grass) extract is an antioxidant and bactericide, and stabilizes oil and water emulsions. See abstract. The extract is used in food industry, which indicates that the extract is safe and biologically

acceptable. The reference teaches that the extract is first added to water and subsequently added to oil, which indicates that the extract is water-soluble.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to modify the compositions of the '133 and '557 patents by combining the active plant extracts because both references are directed plant extract cosmetic compositions for moisture retention and treatment of dry, itchy, and inflamed skin conditions. A skilled artisan would have had a reasonable expectation of successfully producing an improved cosmetic composition with enhanced cosmetic properties. Further incorporating buffalo grass extract would have been also obvious in view of Dimentii, because the latter teaches that buffalo grass extract is safe, stabilizes water and oil emulsion, and provides antioxidant and bactericide properties. The skilled artisan would have had a reasonable expectation of successfully producing a non-toxic cosmetic composition with improved stability, antioxidant and bactericidal properties.

**Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the '113 patent, the '557 patent, the abstracts and translation of these patents, and Dimentii as applied to claims 1, 2, 5, 6, 8-14 as above, and further in view of Plant Guide (USDA NRCS, February 2000).**

The references fail to mention the content of the buffalo grass extract.

Plant Guide teaches that buffalo grass (sweet grass, *Hierochloe odorata*) contains coumarin which gives the plant its characteristic sweet smell. See p. 1, Uses, Caution.

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Based on the teaching of Plant Guide, it would have been obvious to one of ordinary skill in the art that buffalo grass extract contains coumarin.

**Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the '113 patent, the '557 patent, the abstracts and translation of these patents, and Dimentii as applied to claims 1, 2, 5, 6, 8-14 as above, and further in view of Simopoulos (Plant Guide (USDA NRCS, February 2000)).**

The combined references do not mention the content of the purslane extract.

Simopoulos teaches that samples of purslane (*Portulaca oleracea*) contain omega-3 fatty acids such as alpha-linolenic acid. Since alpha-linolenic acid is a polar compound, it is obvious that the extract containing alpha-linolenic acid is water-soluble.

Based on the teaching of Simopoulos, it would have been obvious to one of ordinary skill in the art that the aqueous purslane extract of the '557 patent contains omega-3 fatty acids.

**Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the '113 patent, the '557 patent, the abstracts and translation of these patents, and Dimentii as applied to claims 1, 2, 5, 6, 8-14 as above, and further in view of Taylor-McCord (US 5266318).**

The combined references do not explicitly suggest using the extracts of instant claim 7.

Taylor-McCord teaches that aloe vera extract is a natural anti-inflammatory agent and formulated into topical compositions. See col. 1, lines 43-53.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to further modify the teachings of the combined references by incorporating aloe vera extract, as motivated by Taylor-McCord, because the l'113 and '466 patents are directed to topical composition for treating inflamed skin conditions, among others, and Taylor-McCord teaches that aloe extract also is a natural anti-inflammatory agent for topical formulations. The skilled artisan would have had a reasonable expectation of successfully producing an improved skin care composition comprising enhanced anti-inflammation properties.

#### ***Response to Arguments***

Applicant's arguments filed August 25, 2007 have been fully considered but they are moot in view of new grounds of rejections.

#### ***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gina C. Yu  
Patent Examiner